During the same period I sold, of the lands belonging to the Seminary Fund, three thousand and ninety-two 42-100 acres, and received therefor in cash, five thousand and seventy-six dollars and forty-six cents, ($5,076.46,) and in bonds nine thousand one hundred and three dollars and five cents, ($9,103.05.) The following statement shows the amounts received, disbursed and remaining on hand on account of the Seminary Fund:

Received in Cash.

From land sales as above reported,	$5,076.46	
From principal of bond paid,	20.19	
From interest " " "	.31	—$5,096.96

Disbursed.

Amount paid over to C. H. Austin, Treasurer,	$5,096.96

Received in Bonds.

From land sales as above reported,	$9,103.05
Unpaid bonds previously given for lands,	2,633.24
Whole amount of unpaid bonds on hand,	$11,736.29

None of the interest due the School Fund has been collected this year, consequently there was nothing to apportion under the provisions of the act passed at last session entitled "an act to provide for the indigent white youth of Florida."

Under the provisions of the "act authorizing the sale of escheated lands lying in the county of Volusia, and formerly belonging to the estate of John Eaton, deceased," said lands were appraised at $3000. After giving three months notice by public advertisement, I offered said lands for sale at Enterprise at the appraised valuation. But one person applied to purchase the same, and he not being prepared to pay the full amount of purchase money at the time, I left him in charge of the place, but made no sale. He has deposited with me a portion of the purchase money, which will be returned if he shall fail to pay the remainder, or if the General Assembly shall direct that said lands be again offered for sale.

I have received the census of children from but three counties, which is probably owing to the fact that there has been nothing received this year for apportionment.

In pursuance of the act approved January 16, 1866, the State Seminary East of the Suwannee has been removed from Ocala to Gainesville. Mr. J. H. Roper, of Alachua county, has donated to said institution the Gainesville Academy with a lot of ground 320 x 197 feet. I went to Gainesville with a view of visiting the Seminary, but urgent business compelled me to return immediately, without having accomplished that object. I, however, requested A. T. Banks, Esq., to visit the institution in my stead

and report with respect to its condition and prospect of usefulness. His report will probably be received by the time of the meeting of the General Assembly.

The Seminary West of the Suwannee, at Tallahassee, was not fully reorganized until last month. The male and female departments of that institution have now resumed their labors under efficient instructors.

I have not as yet received any official reports from the Boards of Education or Boards of Visitors, but should such reports be received in time, I will transmit to the General Assembly any useful information or suggestions that may be embraced therein.

I have the honor to be, very respectfully,

Your obedient servant,

HUGH A. CORLEY,
Register of Public Lands.

ATTORNEY GENERAL'S REPORT.

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ATTORNEY GENERAL'S OFFICE,
TALLAHASSEE, FLA., November, 1866.

His Excellency, DAVID S. WALKER,
Governor:

SIR: The law makes it the duty of the Attorney General to report to you before each session of the General Assembly "as to the effect and operation of the acts of the last previous session, the decisions of the courts thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand."

In discharging this duty I shall take occasion, first, as in all my previous annual reports, to refer to the subject of a Digest, Codification or Revision of our Statutes. I regard it as superfluous to present the reasons why this work should be provided for by the Legislature. Nearly twenty years have elapsed since the compilation of Thompson's Digest, and since that time a large number of acts have been placed upon the statute books on a great variety of subjects. These laws, mixed with private and local acts, are scattered through fifteen or sixteen pamphlets, many of which are out of print and otherwise inaccessible to the public at large. Many of these laws have been repealed, amended, re-enacted and changed in various ways, so that to ascertain the statute law on various subjects is a work of much time and diffi-

culty, even to professional lawyers. Of course such a condition of our statutes is intolerable, and it is the duty of the General Assembly to make a provision by which our statutes may be placed in some compact form accessible to all our citizens.

At the session of the General Assembly of 1864, a resolution was adopted authorizing and requiring the Attorney General to "make an alphabetical and chronological index of all the statutes and ordinances of the State of Florida since the adoption of Thompson's Digest and now in force, designating any important amendments, embracing, as far as practicable, such matters as may be substituted for a Digest or Compilation, having reference to cheapness and efficiency." This duty imposed upon me I have discharged to the best of my ability. The work is completed and awaits the action of the Legislature. The resolution makes no provision for the publication of the work, and as this will involve considerable expense, it being a work of much labor and complexity, and requiring great accuracy, I have been unwilling to assume the authority of its publication, unless expressly authorized by law. Although this index will obviate, to a great extent, the necessity for a digest, yet it cannot fully accomplish, as prepared according to the provisions of the resolution, the purposes of a code, digest, or complete revision of our statutes. We want a work that includes in one volume the whole statute law of the State. This index, in addition to the public or general statutes adopted since Thompson's Digest, an analysis of which are given, contains a reference to local and private statutes, which could not properly be included in a digest or code, but which, in the aggregate, are of interest to the whole State. For this reason alone its publication is desirable, even if it does not entirely supercede the necessity for a regular digest, code, or revision of the statutes. In its present manuscript condition, it will be of much value to the executive officers of the State and to the committees of the General Assembly.

The general index to the decisions of the Supreme Court, required to be prepared by the same resolution, has been completed and published according to the requirements of the law.

In my report, made in November, 1864, I referred to the subject of the appointment of Sheriffs by the Judges of the Circuit Courts; to the law relative to county organizations, and to the interchange of Circuits by Circuit Judges, and the determination of causes arising in the several Circuits. The views expressed therein in regard to these subjects are, I think, still applicable, and deserve the consideration of the General Assembly, as also subjects mentioned in preceding reports, but to which a repeated reference in this report may not be necessary or proper, not being matters arising under the "acts of the last previous session" of the General Assembly.

The acts of the last session of the General Assembly, based, as

many of them are, on the fundamental changes made in the Constitution of the State, in society, and the relation of races in our country, caused by the results of the late war, have not yet received that trial which would authorize me to give a decided opinion as to their "effect and operation." The partial intervention of martial law, and the still unsettled condition of the country, have prevented that complete and thorough test which will enable us properly to judge of the effect of institutions and laws.

Among the most important acts adopted at the last session is the act to establish and organize a County Criminal Court. While the establishment of this Court has in many instances facilitated the administration of justice and the punishment of crime, it cannot be denied that this advantage has been obtained at great expense to the several counties, and much inconvenience and loss of time to citizens acting as jurors. In many cases there are a double list of fees, one to be paid by the State and another by the county; so that the administration of justice has been made very expensive. I am satisfied that the intention of the Legislature was, that offences against the criminal laws should be punished promptly, if not immediately, after their commission: that the offender, when it was practicable, should be brought at once before the County Criminal Court and there tried immediately. This intention of the law has been effected but partially, and amendments to the law may, I think, be adopted beneficially to effect this purpose. If the trial by jury for all offences be preserved, and, under the Constitution, I see not how this can be avoided, the inconvenience to citizens acting as jurors must continue under any system proposing speedy trial. I would suggest, however, that it be considered whether or not, for the trial of petty larceny, assault and other small offences, the number of the jury might not be reduced to six instead of twelve. This would diminish, by nearly one-half, the inconvenience, loss of time and expense of juries. It has been suggested, that instead of the County Criminal Court, the Judges of the Circuit Courts should be required to hold intermediate terms of their courts exclusively for the trial of criminal offences, and that their salaries be increased in compensation therefor. It has also been suggested that the Justices of the Peace, in their several districts, be empowered to take cognizance of and try small offences; also that the number of Justices of the Peace be diminished, and that they be required to meet at stated periods, at the county site, to try the offences now within the jurisdiction of the County Criminal Courts. These various propositions I mention without having been able myself to form any decided opinion or preference in regard to either. The practical effect of an institution can in most cases be ascertained properly only from its actual trial. We may have to experiment for some time before we ascertain

...adequate system for punishing crime and preserving order under our new social organization. It must not be supposed, however, that any system can be invented which will obviate the increased demand for the services of courts and jurors, or bring to a former standard the expenses and inconveniences of administering justice and punishing criminals. The abolition of slavery has thrown into the courts a great number of petty offences and small civil suits that were previously punished or settled by the master of slaves without expense or delay. These matters, however trivial, must now go through the forms, the delays and the expenses of the law. A large increase of judicial business must be the inevitable consequence, and the Legislature must base its system of judicature on this inexorable fact.

Whatever may be the determination, however, of the General Assembly in regard to the organization of courts for the punishment of crimes, I would advise that when a court is vested with jurisdiction, in case of any particular offence, that the jurisdiction be exclusive. There is no reason why this should not be so, of which I am aware, and this provision would prevent much confusion relative to the expenses of such courts and the prosecutions therein, and make uniform throughout the State the relative expenses of criminal prosecutions. It has occurred under the present system that in some counties many cases coming within the jurisdiction of the County Criminal Court have been sent to the Circuit Court, and the expenses thereof required to be paid out of the State Treasury. This operates unequally and unjustly. If one county pays the whole expenses of her criminal prosecutions in certain cases, out of her own treasury, it is but right that all should do the same. The counties should not, through their officers, be allowed to discriminate in their own favor in such matters. The law should be made applicable alike to all counties, without any method of evasion allowed.

In connection with the subject of the County Criminal Court, I would direct your attention to the costs in criminal cases. I know of no policy that would limit the compensation of public officers to a mean and insufficient amount, which would prevent any but those who are disqualified for any other business or function to take them; but at the same time there should be such a regulation as would equalize the expense, and not obstruct the the administration of justice. By the act of Nov. 30, 1863, the fees of the ministerial officers engaged in the administration of justice, were increased two-fold. Under this act and by reason of other defects in our judicial and criminal laws, it often results that the costs of criminal prosecutions in petty cases, amount to sums that are altogether disproportionate to the fines or penalties imposed or the offence committed. It frequently happens that the costs of a criminal prosecution for a petty of-

fence, exceeds ten-fold the fine or penalty imposed by the court or jury. The result, in fact, is that whatever the circumstances of the case may be, the State or county, or the person convicted, has a large bill of costs to pay, amounting sometimes to hundreds of dollars, when the offence is almost justifiable, or may almost be called technical. These costs the jury cannot prevent or the Executive remit. This should be remedied. Officers must be paid for their services, but justice to them should not involve injustice to others. I think that the courts or juries should be empowered to fix the costs in all criminal cases, not to exceed the fine imposed, or that the State assume the payment of these costs; that a fixed amount be allowed Justices of the Peace, Sheriffs and other officers for their services in criminal cases, and that it shall be their duty to execute all process of courts for a certain fixed cost. If this be deemed not advisable, a provision might be made regulating the costs for summoning juries and witnesses, which would place it in the absolute discretion of the courts as to the witnesses which should be summoned and the amount allowed therefor, as also in regard to other costs. And in certifying bills of costs, Judges, Justices and Clerks should be required to take care that nothing but actual and not mere technical service, mileage, &c., be allowed compensation. Whether the present tariff of fees should be diminished or not, is a question connected with the currency which the Legislature should determine on a basis of justice to public officers as well as to the general public.

Instances have occurred, in which the officers of courts have required the prepayment of costs, in such cases as the law provides for the payment thereof, by the complainant or prosecutor, on failure of conviction, as assault and battery, &c. This I regard as not authorized by law, but as some doubt may attach to the subject, I would recommend that the General Assembly settle the question by appropriate legislation. The policy of the existing law requiring the payment of costs by prosecutors in some cases, on failure to convict, was intended to prevent frivolous informations and prosecutions; but this design should never be allowed to interfere with the substantial administration of justice; and as the officer can ultimately obtain his costs from the State or county, there is no reason why a payment in advance should be required. The whole public is interested in the punishment of offenders against the laws, and no system of payment of costs should be permitted which would essentially interfere with this purpose.

The punishment of offences by fine has been found to operate ineffectually, and in some instances unjustly. In a great number of instances, criminals are utterly unable to pay fines, even of the smallest amount, with the costs of prosecution. As the law now exists, they are liable to be hired out, for the purpose of working

out the amount. But persons will not hire criminals for ordinary labor, and the result is that they are usually remanded to jail, where, after a lengthy incarceration at the expense of the State or county, they are liberated. Other punishments can, I think, be made more effectual than fines which are rarely collected.

In connection, therefore, with the subject, I would call your attention to the great importance of the establishment of a State prison or penitentiary. Until such an institution is established, the punishment for most crimes and offences must necessarily be imperfect and irregular. I do not propose to enter upon the subject of the penitentiary system, which may now be considered as that established by the experience of all civilized nations as best adapted to the punishment of crimes and the reformation of criminals. There is no question left in regard to this fact. The only question is whether this State can establish such an institution at this time. If the Legislature can devise means for such a purpose, I think there can be no doubt as to the policy, and great usefulness of such an institution. Until such time as a State prison or penitentiary can be established, provision should be made for the employment of the labor of criminals on our roads, highways and works of internal improvement. This species of labor should be aggregated so as to diminish the expense of overseeing it, and, also, to render it more effectual.

Among the acts passed at the last session of the General Assembly is one entitled "an act to amend an act to authorize the Circuit Courts of this State to grant licenses for building toll bridges and for other purposes." This act, as far as its provisions extend, is, I think, proper; but there are defects in the law on this subject which should be remedied. The act, according to the Constitution, (Art. iv. sec. 18,) provides, that where a river divides judicial districts, the petitioner shall be compelled to obtain license from the Judges of each district. Now, in case the Judges of neighboring Circuits should not be able to agree in regard to a particular bridge or ferry, as to who should have license or where it should be, the result must be that neither party could establish a bridge or ferry, perhaps much to the inconvenience of the public. The provision of the Constitution which limits the granting of licenses for bridges and ferries to the Judges of the Circuit Courts cannot be evaded, and therefore I would recommend that a provision of law be made authorizing the Governor or the Supreme Court to direct, in case of disagreement between Judges of the Circuit Courts on these subjects, that a third Circuit Judge be called in to determine the matter. I would also suggest that a provision be made for a writ of *ad quad damnum*, to be executed when necessary, in the establishment of bridges and ferries, in the same manner as in regard to railroads and other works of internal improvements. Bridges and ferries are necessary for the public convenience and should have

all the privileges and be subject to all the liabilities of other works of internal improvement.

At the last session of the General Assembly an act was passed entitled "an act concerning testimony." There is in this act an omission, clearly the result of oversight. The act authorises or requires the parties to a suit themselves to testify in the same and to be witnesses for or against themselves, but it does not remove the disability of witnesses not parties but interested in the result of the cause. Of course there is no reason for any distinction between these latter and the original parties to the suit in this respect. If, therefore, the principle involved in this Act is proper, the disibility of such witnesses should be removed, and they should be allowed to testify upon the same conditions and to the same effect as the parties to the suit. Neither can I see the reason of the provision of the 2nd section of this act which excludes executors and administrators from the provisions of the same. It seems to me that these latter should be allowed to testify on the same conditions and to the same effect as other parties to suits. If there is any reason for excluding them rather than their testators or intestates, if they were alive, I have not been able to discover it. I would further remark, in regard to the 3d section of this act, that the testimony of colored persons should be allowed to be taken as that of other persons in all matters or suits between persons of their own color. Of the credibility of such witnesses or evidence, the court or jury would of course necessarily judge in making a decree or verdict.

I would respectfully invite your attention to the subject of permitting the Judges of the Circuit Courts to order and hold extra terms of court at their discretion, especially for the trial of criminal cases. I am aware that this subject has heretofore occupied the attention of the Legislature, and that to a certain extent this power is vested in these judges. This, however, is only in case of failure to hold the regular terms of such courts. I think that the Judges of the Circuit Courts may be safely invested with the power. It is always presumed that the judges are persons eminent for discretion and virtue and not disposed to exercise any power arbitrarily or in any other manner than for the public welfare, the ends of justice and a scrupulous regard to the rights of individuals. Cases have arisen in which the power, if possessed by the Judges of the Circuit Courts, could have been exercised with a beneficial effect. Accused persons have lain in jail for half a year, without the possibility of trial or release, at great expense to the State, and in some instances, to the great wrong of the parties accused. Had the Circuit Court possessed the power to order a trial at once of such persons, this could be avoided. Of course such a power should be conferred with provisions

guarding the rights of accused persons to the fullest extent. I think that the same power should likewise be conferred upon the Justices of the Supreme Court, of holding extra terms, without the limits now prescribed by law.

My attention has been directed to a defect in our law, in regard to county organizations, which should be remedied. There is no general provision for the reorganization of counties that have become disorganized by the results of war or accident. In case of the absence or death of the Judge of Probate and Clerk of the Circuit Court, or from any other cause, the county organization is destroyed, until by special act of the Legislature or a questionable exercise of power by the Judge of the Circuit in which such county is, a reorganization cannot be had. I think that the Governor of the State should be vested with the power to reorganize counties in such cases. County organization is, under our system, the basis of all practical enforcement of the laws, and it should not be possible that a county may be left in the condition of complete disorganization.

At the last session of the General Assembly was passed "An Act in relation to contracts of persons of color." While I find as yet no objection to the practical operations of the provisions of this act, I am forced to the conclusion that it is not constitutional in some of its provisions. It makes a discrimination between white persons and persons of color which is prohibited by the first clause of the XVI Article of the Constitution of the State. The first section of this act discriminates against the white man, and the second against persons of color. The first section provides in effect that a colored person may enforce an unwritten or parol contract against a white person, but that such contract cannot be enforced against persons of color. The second section provides certain punishments for persons of color violating contracts, which are not applicable to white people. These discriminations, however wise and useful they may be, are unconstitutional, and the General Assembly should at once do away with them as they may defeat the object of the whole act, if persisted in. An amendment rectifying this portion of the law can be made without in any respect impairing its practical efficacy.

For a similar reason, I would recommend an amendment to the 12th section of "An Act prescribing additional penalties for the commission of offences against the State, and for other purposes." This section prohibits persons of color from owning, using or keeping fire arms, bowie knives, &c., without license. This discrimination, on account of color, is positively prohibited by the clause of the Constitution of the State to which reference is above made. If it be thought desirable that the owning and carrying of fire arms should be regulated, an act can be passed not coming under the insuperable objection above stated, which practically may accomplish all the objects for which the act was

intended. It must be borne in mind constantly by our legislators that legal discrimination on account of color, however small it may be, cannot be made under the Constitution of this State. Any attempt to accomplish it only has the effect to render null and void the law, at least to that extent, and may be altogether.

The expenses incurred in the administration of small estates should be reduced to a reasonable standard. There should be some proportion established between the amount of costs and the amount of the assets of the estate. In many instances it has occurred that the expenses of administering small estates has consumed the larger portion thereof, or has entirely prevented any administration at all from being had. Justice and policy require that this should be remedied.

On the subject of Taxation and Revenue, I had noted several subjects for this report, but as a Commission has been appointed under a resolution of the General Assembly to report a system of revenue for the State, it is not necessary that I should refer here to the subjects particularly confided to said Commission.

There are no decisions of the Supreme Court made concerning the laws of the last session of the General Assembly. I may not improperly direct your attention to a decision of the Supreme Court, made at Marianna, in the case of Kimball vs. Jenkins. In that case the Court decide:

"1st. The lien of an execution issued and placed in the hands of the Sheriff in the life-time of the defendant, is not affected by the death of the latter, but is preserved in full force, and to be regarded in the administration of the estate.

"2d. The words 'all other claims and demands' occurring in the act of 1853, are not to be construed as vacating prior existing liens, whether the same arise from contract or are given by operation of law."

It will be perceived that the effect of this decision will prevent the *pro rata* distribution of insolvent estates of deceased persons according to the act of 1853, so far as judgments or executions are concerned; the same principle applying to both. The subject is one of considerable importance and deserves the consideration of the General Assembly. If there is any reason why a judgment or execution creditor should be allowed to absorb the whole of an estate to the entire exclusion of all other claims, although admitted to be equally just, necessary and proper, then the law should be permitted to remain as it is. If there is no reason of legal policy why this should be, the law should be so amended as to subserve the purposes of abstract justice.

Since the period of my last report, events have transpired in the history of our country which have fundamentally changed our social, political and legal system. The ultimate effect and operation of these changes are beyond the reach of human foresight. Although our people are not responsible for these changes,

they have recognized them as facts accomplished, and have, with remarkable wisdom and discretion acquiesced in the new order of things, and united in the faithful execution of the Constitution and the laws. Our colored population have been orderly and industrious to a degree remarkable under the circumstances that surround them, and have given evidence of a disposition, which, if not interfered with by the fanatical and hypocritical enemies of our country and of their race, will, to a large extent, mitigate the unavoidable miseries attending their sudden emancipation. Upon the faithful execution of our laws, in spirit, and in truth, by the Courts, the juries and the officers of our State, will depend, to a great extent, that feeling of public security and confidence which is so necessary to the happiness and prosperity of a people. Prejudice, passion and partiality, must, in all cases, be guarded against and avoided, and substantial justice must be done practically to all. It matters little what our constiution provides or our Legislature enacts, if the laws are not executed faithfully and impartially, and it affords me gratification to report that, so far as my observation extends, there has been generally manifested on the part of our people a disposition to enforce the laws justly and fairly, and conscientiously themselves to abide by the same. It is this disposition of a people that enables them to govern themselves successfully, entitles them to that right and destroys the least vestage of an excuse or pretence for governing them with arbitrary and irresponsible power; and the full re-establishment in our State of civil law and authority by the President of the United States, has proved his justice and wisdom, and gives an assurance of his determination to maintain constitutional liberty and republican principles in our country.

Very respectfully,
JNO. B. GALBRAITH,
Attorney General.

SECRETARY'S REPORT.

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OFFICE OF THE SECRETARY OF STATE,
TALLAHASSEE, Nov. 14th, 1866.

His Excellency, DAVID S. WALKER,
Governor of Florida:

SIR—I have the honor to report receipt at this office since the 21st day of December, A. D. 1865, of the following contributions for the use of the State Library, viz: From the Department of the Interior, the proceedings of Congress, Executive and Legislative; Journals Senate and House; Reports of Committees and from the Departments from 1859–60 to 1865–6 inclusive, comprising in all some.....360 vols.
Also American papers..... 17 "
Writings of James Madison,..... 4 "
U. S. statutes at large 1865–6,..... 34 "

I have also received in exchange from the several States of Nevada, Iowa, Minnesota, Michigan, Maine, Connecticut, New Jersey, Pennsylvania, Illinois, California, Maryland, Kentucky, Tennessee, Georgia and Alabama, the proceedings of their respective Legislatures, accompanied in some cases with their Statute Laws, and Department Reports—thus adding altogether over four hundred and fifty (450) volumes to the Executive and Legislative Departments of the State Library. With regard to the Judicial, the most important branch of the Library, I have, for an obvious reason been less successful, but nevertheless, in spite of my inability to furnish the necessary exchanges, some additions have been made, to-wit: 11 volumes Illinois Reports; 1 vol. Digest; 2 vols. California, no. 28; 2 vols. Pennsylvania, nos. 49 and 50; 2 vols. Nevada, no. 1; 1 vol. Iowa, no. 17; 1 vol. Digest; 1 vol. Minnesota, no. 10; 1 vol. Alabama, no. 37; 1 vol. Connecticut, no. 27; 1 vol. Kentucky, no. 1.

In conclusion, I would respectfully suggest for the consideration of the General Assembly, that the Secretary of State be authorized to have published and bound annually, a sufficient number of extra copies of the Florida Reports to exchange with all the States. It is belived that it would be an easy matter to resume and carry on the system of exchange so happily commenced prior to the war, and the importance of augmenting this branch of the Library at so small a cost to the State, is deemed too obvious to admit of argument.

I have the honor to be,
Very respectfully,
BENJ. F. ALLEN,
Secretary of State.